

# American Federation of Labor and Congress of Industrial Organizations



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December 17, 1996

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General Counsel  
Federal Election Commission  
999 E Street, N.W.  
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DEC 18 4 39 PM '96  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

RE: FEC MUR 4505

Dear Mr. Noble:

This constitutes the response of the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), AFL-CIO Secretary-Treasurer Richard L. Trumka, and the AFL-CIO Committee on Political Education ("AFL-CIO COPE") (hereinafter "respondents") to the complaint in the above-referenced matter filed by the National Republican Senatorial Committee on October 22, 1996.<sup>1</sup>

The complaint in this matter does not mention the AFL-CIO or AFL-CIO COPE. However, the amendment to the complaint alleges that the AFL-CIO or AFL-CIO COPE violated the Federal Election Campaign Act of 1971, as amended ("the Act") by making treasury money expenditures for a television advertisement broadcast in the state of New Jersey on October 17, 1996, which, according to the complainant, contained a "clear 'electioneering' message". The amendment also alleges that the AFL-CIO's television advertisement violated the disclaimer requirements of 11 C.F.R. § 110.11(a)(1).

The complaint misstates both the facts and the law. The AFL-

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<sup>1</sup> The Commission received the amendment to the complaint on October 22, 1996. The Commission did not serve the AFL-CIO with a copy of the amendment to the complaint until October 30, 1996. See Attachment A. The Act requires the Commission to notify a "person alleged ...to have committed...a violation...within 5 days after the receipt of a complaint." 2 U.S.C. §437g(a)(1). Since the complaint was not served on respondents in a timely manner, it must be dismissed.

CIO medicare television advertisement which aired in New Jersey between October 16 and October 25, 1996, was a voter guide. The voter guide advertisement compared the positions of two candidates for the United States Senate in New Jersey -- Congressman Dick Zimmer and Congressman Robert Torricelli -- on a campaign issue -- cuts in federal funding for Medicare. See Declaration of Denise Mitchell (hereinafter "Mitchell Dec."), Attachment 1. It then informed viewers that they could obtain additional information on the candidates' positions on the issues by calling the AFL-CIO's 800 number. Viewers who called this number were sent a written voter guide which compared the two candidates' positions on a number of issues of importance to working families. See Mitchell Dec., Attachment 2.

The Commission's regulations expressly permit labor organizations and corporations to make treasury money expenditures for voter guide communications aimed at the general public, notwithstanding the fact that those voter guide communications refer to specific candidates by name. See 11 C.F.R. §114.4 (c) (5). The regulations provide, in relevant part, that a labor organization may prepare and distribute "voter guides consisting of two or more candidates' positions on campaign issues " provided that:

(i) the corporation or labor organization shall not contact or in any other way act in cooperation, coordination, or consultation with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents, and distribution of the voter guide and no portion of the voter guide may expressly advocate the election or defeat of one or more clearly identified candidate(s) or candidates of any clearly identified political party; [11 C.F.R. 114.4 (c) (5) (i).]

The AFL-CIO's Medicare voter guide advertisement and its written voter guide for the New Jersey Senate race fully complied with the requirements of the above-stated regulation. The voter guide television advertisement compared the positions of two candidates for the United States Senate on a campaign issue -- Medicare funding. The written voter guide compares the positions of the same two candidates on five different issues.

Both the television voter guide and the written voter guide were prepared from independent research of public sources with no contact with either Congressman Zimmer or Congressman Torricelli or their campaigns. See Mitchell Dec. at 6, 7. Neither the preparation, content, nor the distribution of the Medicare television voter guide advertisement or the written voter guide for the New Jersey Senate race was coordinated with either candidate nor was the television voter guide or the written voter guide done at the request or suggestion of, or in cooperation, consultation, or coordination with Congressman Zimmer or Congressman Torricelli, or any representative or agent of their campaigns. See Mitchell

Dec. at 8, 9. And in fact, the complaint does not allege any such coordination.

Finally, neither the AFL-CIO's television voter guide advertisement nor its written voter guide urged the viewer or reader to vote for or against any candidate and neither voter guide contained other words of express advocacy as set forth in the Commission's regulations. 11 C.F.R. §100.22(a).<sup>2</sup>

Notwithstanding the above, the complaint herein proceeds on the erroneous basis that the proper standard for determining whether or not the AFL-CIO's expenditures for its Medicare voter guide television advertisement were lawful is whether the message contained in that voter guide advertisement constituted an "electioneering message". Assuming that the "electioneering message" standard is valid (but see, Clifton v. Federal Election Commission, 927 F. Supp. 493 (D. Me. 1996) appeal pending), it is not applicable to the AFL-CIO's Medicare television voter guide advertisement since § 114.4 (c)(5)(ii) applies solely to voter guides that are based with contact with the candidates in the form of a written questions and not to voter guides such as the AFL-CIO's based on independent research. See 11 C.F.R. §114.4 (c)(5)(ii).

Likewise, the disclaimer requirements in 11 C.F.R. §110.11, are legally irrelevant in this matter since those requirements apply solely to communications that "expressly advocate the election or defeat of a clearly identified candidate" and the AFL-CIO voter guides did not contain any "express advocacy".

For the foregoing reasons, the Commission should take no further action in this matter and should dismiss the complaint against respondents AFL-CIO, AFL-CIO COPE, and Richard L. Trumka.

Respectfully submitted,

*Margaret E. McCormick*

Margaret E. McCormick  
Counsel for Respondents

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<sup>2</sup> To the extent that 11 C.F.R. §100.22(b) remains effective, when taken as a whole and with limited reference to external events, the AFL-CIO's medicare voter guide advertisement could not have been interpreted by a reasonable person only as containing advocacy of the election or defeat of one or more clearly identified candidates. But, see, Maine Right to Life Committee, Inc. v. Federal Election Commission, 914 F.Supp. 8 (D.Me. 1996), affirmed \_\_\_ F.3d \_\_\_ (1st Cir. 1996); Federal Election Commission v. Christian Action Network, 894 F. Supp. 946 (W.D. Va. 1995), affirmed per curiam, 92 F.3d 1178 (TABLE), No. 95-2600 (4th Cir. August 2, 1996) (unpublished disposition).

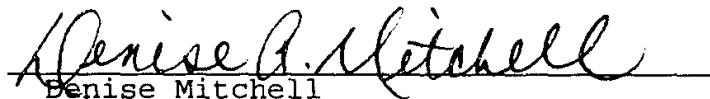


7. The written voter guide referred to in paragraph 5 was prepared without contacting either of the candidates mentioned in that voter guide. All information relied upon in preparing that voter guide was obtained from public sources, including the Congressional Record, newspaper articles, etc.

8. Neither I, nor to the best of my knowledge, anyone on my staff, ever discussed any aspect of the preparation, content, or distribution of the AFL-CIO's Medicare television voter guide advertisement or its written voter guide with Congressman Zimmer or Congressman Torricelli, or any representative or agent of those candidates' campaigns.

9. Neither the AFL-CIO's Medicare television voter guide advertisement for New Jersey or its New Jersey Senate written voter guide were prepared at the request or suggestion of, in cooperation or consultation with, or in coordination with either Congressman Dick Zimmer or Congressman Robert Torricelli or any representative or agent of those candidates' campaigns.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. Executed this 18 day of December, 1996.

  
Denise Mitchell

AFL-CIO

AFL-TV-50

"Medicare" Zimmer NJ-SEN

October 15, 1996

:30 for TV

Collage of families  
CG: What's Important to America's  
Families?

Elderly woman, interview style  
Freeze on man  
CG: Issue: Medicare

Picture of capitol rotunda  
CG: Congressman Zimmer  
Voted to cut Medicare funding by \$270  
billion...  
Source: HR 2491, 11/17/95

CG: ...and cause premiums to double.  
Source: Congressional Budget Office  
Analysis of HR 2491, 11/16/95

Picture of invalid having blood pressure  
taken  
CG: Congressman Torricelli  
Opposed the \$270 billion Medicare cuts.  
Source: HR 2491, 11/17/95

Collage of working people  
CG: Voter Information for  
Working Families  
1-888-235-2463  
CG: Paid for by the men and women of  
the AFL-CIO

What's important to America's  
families?

"I'm very concerned about  
Medicare. I just can't afford to pay any  
more."

Where do the candidates stand?  
Congressman Dick Zimmer voted to cut  
Medicare funding by two hundred and  
seventy billion dollars.

According to the Congressional  
Budget Office, the plan would have  
caused Medicare premiums to double.

Congressman Bob Torricelli,  
opposed those Medicare cuts.

When it comes to Medicare, there  
is a difference.

Call and find out.

## VOTER INFORMATION for WORKING FAMILIES

AFL-CIO  
815 16th Street, NW  
Washington, DC 20006

Here's the voter information  
you requested...

FIRST CLASS MAIL

SENATE RACE • NEW JERSEY

Where do the  
Candidates for Congress  
Stand on Issues Critical to  
Our Lives and Our Families' Future?

VOTER INFORMATION  
for WORKING FAMILIES

A SERVICE FROM THE MEN AND WOMEN OF THE AFL-CIO

# Our Families, Our Future

For the wealthy, times have never been better. Corporate profits and executive salaries are soaring. But for working families, times are tough. Most are just barely making it—working harder to stay even, struggling to find time to spend with their families. That's why it's more important than ever for voters to get informed when it comes to the issues that are central to *our* lives and *our* children's futures. Find out where the candidates for election this year stand.

ROBERT TORRICELLI	ISSUE	DICK ZIMMER
OPPOSES <sup>1</sup>	Tax benefits for wealthy at expense of middle class	SUPPORTS <sup>2</sup>
SUPPORTS <sup>3</sup>	Maintaining programs that keep college loans affordable	OPPOSES <sup>4</sup>
SUPPORTS <sup>5</sup>	Increasing the minimum wage and job opportunities	MIXED <sup>6</sup>
SUPPORTS <sup>7</sup>	Protecting children and education program funding	OPPOSES <sup>8</sup>
SUPPORTS <sup>9</sup>	Maintaining affordable health care and Medicare	OPPOSES <sup>10</sup>

<sup>1</sup>**Torricelli:** Torricelli voted to close the loophole that permits wealthy Americans to avoid paying taxes by renouncing their citizenship. (HR 831, House Vote 1272, 3/28/95) Torricelli voted against a \$245 billion tax break disproportionately favoring the wealthiest Americans, and voted against a substantial reduction in the alternative minimum tax, which would have allowed America's biggest companies to pay less taxes. (HR 2491, House Vote 1812, 11/17/95)

<sup>2</sup>**Zimmer:** Zimmer voted against closing the loophole that permits wealthy Americans to avoid paying taxes by renouncing their citizenship. (HR 831, House Vote 1272, 3/28/95) Zimmer voted for a \$245 billion tax break disproportionately favoring the wealthiest Americans, and voted for a substantial reduction in the alternative minimum tax, allowing America's biggest companies to pay less taxes. (HR 2491, House Vote 1812, 11/17/95)

<sup>3</sup>**Torricelli:** Torricelli voted against cutting student loans by \$5 billion over seven years and rolling back the direct student loan program from 40% to 10%. (HR 2491, House Vote 1812, 11/17/95)

<sup>4</sup>**Zimmer:** Zimmer voted to cut student loans by \$5 billion over seven years and roll back the direct student loan program from 40% to 10%. (HR 2491, House Vote 1812, 11/17/95)

<sup>5</sup>**Torricelli:** Supported raising the minimum wage—six times. (HR 1227, House Vote 2192, 5/12/96; HR 3136, House Vote 2100, 3/28/96; H Res 412, House Vote 2133, 4/25/96; H Res 418, House Vote 2140, 5/1/96; H Res 426, House Vote 2153, 5/8/96; H Res 303, House Vote 2169, 5/15/96) Torricelli voted against cutting the earned income tax credit. (HR 2491, House Vote 1812, 11/17/95)

<sup>6</sup>**Zimmer:** Opposed raising the minimum wage five times; then later supported the wage increase. (HR 1227, House Vote 2192, 5/12/96; HR 3136, House Vote 2100, 3/28/96; H Res 412, House Vote 2133, 4/25/96; H Res 418, House Vote 2140, 5/1/96; H Res 426, House Vote 2153, 5/8/96; H Res 303, House Vote 2169, 5/15/96) Zimmer voted for cutting the earned income tax credit. (HR 2491, House Vote 1812, 11/17/95)

<sup>7</sup>**Torricelli:** Torricelli voted against billions of dollars in cuts to education and training programs. (HR 2491, House Vote 1812, 11/17/95) Torricelli voted against cutting funding for drug-free schools. (HR 1158, Vote # 1251, 3/16/95) Torricelli voted against cutting the earned income tax credit. (HR 2491, House Vote 1812, 11/17/95)

<sup>8</sup>**Zimmer:** Zimmer voted for billions of dollars in cuts to education and training programs. (HR 2491, House Vote 1812, 11/17/95) Zimmer cosponsored a bill to eliminate the Department of Education. (HR 1883, introduced 6/16/95) Also, Zimmer voted to cut funding for drug-free schools. (HR 1158, Vote # 1251, 3/16/95) Zimmer voted to cut the earned income tax credit. (HR 2491, House Vote 1812, 11/17/95)

<sup>9</sup>**Torricelli:** Torricelli voted against cutting \$270 billion from Medicare and doubling premiums. (HR 2491, House Vote 1812, 11/17/95) Torricelli voted against cuts to veterans' health care. (HR 2089, House Vote 1843, 12/7/95)

<sup>10</sup>**Zimmer:** Zimmer voted to cut \$270 billion from Medicare and double premiums. (HR 2491, House Vote 1812, 11/17/95) Zimmer voted for cuts to veterans' health care. (HR 2089, House Vote 1843, 12/7/95)